

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA**

UNITED STATES OF AMERICA

Plaintiff,

vs.

Case No. 1:21-CR-10023

JOHN KILGALLON, DANIEL C.
MOSTELLER, and STEPHEN
HOUGHTALING.

Defendants.

The United States respectfully moves to re-caption this case as “In Re: Contempt” because the United States has declined to prosecute this matter and expects to file a brief in support of the dismissal of the criminal defendants in this case on August 20, 2021. The United States further requests that the Court identify Special Prosecutor Thomas G. Fritz on the docket as “Court-Appointed Special Prosecutor” to avoid possible confusion when the United States files a brief in this matter.

Counsel for the United States has conferred with Mr. Fritz, who opposes the United States’ requested relief, as well as counsel for the three criminal defendants, who do not oppose the requested relief.

BACKGROUND

The underlying criminal contempt proceeding arises from events that occurred on May 10, 2021, when the United States Marshals Service temporarily removed criminal defendants from the Aberdeen courthouse

following Judge Kornmann's exclusion of the attending Deputy United States Marshal from the courtroom. This matter initially began as a civil contempt proceeding, and was captioned "In re Contempt Sanctions" against the Chief of Staff for the U.S. Marshals Service; the U.S. Marshal for South Dakota; and the Chief Deputy U.S. Marshal for South Dakota. ECF 1. On June 11, 2021, Judge Kornmann concluded that civil contempt was not warranted, and further concluded that the alleged conduct amounts to civil contempt. ECF No. 14

On June 15, 2021, Judge Kornmann issued an order that charged three officials with criminal contempt for obstruction of justice and conspiracy to obstruct justice: the Chief of Staff for the U.S. Marshals Service; the U.S. Marshal for South Dakota; and the Chief Deputy U.S. Marshal for South Dakota. ECF 21. The June 15 order directed the U.S. Attorney's Office for the District of South Dakota to notify the Judge by June 18 whether it would prosecute the criminal contempt charges. *Id.* The order indicated that Judge Kornmann would appoint a private attorney to prosecute the charges if the U.S. Attorney's Office declined to do so. *Id.* On June 17, the clerk's office converted the civil contempt case, which was under a miscellaneous docket entry, to criminal docket number 21-10023. At that point, the caption was changed to "United States" versus the three criminal defendants.

Because the U.S. Attorney's Office for the District of South Dakota was recused, the matter was referred to the Public Integrity Section of the Department of Justice. ECF 29. The Public Integrity Section notified Judge

Kornmann that the United States declined to accept the matter for prosecution.

Id.

On June 29, Judge Kornmann appointed a private attorney, Thomas G. Fritz, as a special prosecutor. *See* ECF 33. In the same order, Judge Kornmann recused himself from further proceedings on the contempt charges, *id.*, and the case subsequently was assigned to Judge Buescher. ECF No. 35. On July 8, 2021, Mr. Fritz and his colleague entered an appearance as “special prosecutor for the United States of America,” ECF No. 36, and the docket currently reflects that he represents the United States.

On July 16, the Court issued a scheduling order which, among other things, ordered all dispositive motions and amicus briefs in support of those motions be filed by August 20, 2021. ECF No. 39.

DISCUSSION

Consistent with the Court’s scheduling order, the United States anticipates filing a brief in support of dismissal of the criminal contempt charges. Because the case is currently captioned as “United States” versus the criminal defendants, and because the special prosecutor is identified as representing the United States, we recognize the potential confusion that would be caused by the United States being identified as both the prosecutor and as a non-party supporting dismissal of the contempt charges. To avoid this potential confusion, the United States requests that the case be re-captioned to “In Re Contempt” and that Mr. Fritz and his colleague be identified on the docket as the “court-appointed special prosecutor.”

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the case be re-captioned and that Mr. Fritz be identified as the “court-appointed special prosecutor.”

Dated: August 16, 2021

Respectfully submitted,

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